

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

February 3, 2005

IN RE:

**PETITION OF FOOTHILLS
UTILITIES, INC. FOR A
CERTIFICATE OF PUBLIC
CONVENIENCE AND NECESSITY
TO PROVIDE SEWER SERVICES
IN BLOUNT COUNTY, TENNESSEE**

**DOCKET NO.
04-00117**

**ORDER APPROVING PETITION TO OBTAIN
CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY**

This matter came before the Hearing Officer of the Tennessee Regulatory Authority (the "Authority" or "TRA") at a Hearing held on October 12, 2004, to consider the *Petition* of Foothills Utilities, Inc. ("Foothills" or "Petitioner") to obtain a certificate of convenience and necessity ("CCN"). At the regularly scheduled Authority Conference held on May 10, 2004 the voting panel assigned to this docket¹ voted unanimously to appoint the Authority General Counsel or his designee to act as the Hearing Officer in this matter, to make findings of fact and conclusions of law as necessary, and to render an initial decision on the merits of the *Petition* pursuant to Tenn. Code Ann. §§ 4-5-301 and 65-2-111 and such other legal authority as may be provided by law.

¹ The voting panel consisted of Chairman Deborah Taylor Tate, Director Pat Miller and Director Ron Jones.

Background

Foothills is a Tennessee Corporation with its principal place of business located at 103 Regal Tower, Maryville, Tennessee.² Foothills seeks to provide sewer service to Laurel Valley, a commercial and residential development located in Townsend, Blount County, Tennessee.

The Petition

Foothills filed its *Petition* on April 19, 2004. Foothills attached to its *Petition* a letter from the State of Tennessee Department of Environment and Conservation Division of Water Pollution control approving the installation of an AdvantTex System to treat and dispose of all wastewater (Exhibit 2). Foothills contends in its *Petition* that sewer services are not available from any other utility company in the proposed service area.³ In support of this contention Foothills attached two letters: one from the Office of the Blount County Mayor, the other from the General Manager of the Tuckaleechee Utility District. Each of these letters acknowledged Foothills request to provide sewer service to Laurel Valley and stated that there was no desire or plan on the part of each respective entity to do so (Exhibit 3). Also filed with the *Petition* were a proposed sample agreement between Foothills and its customers (Exhibit 4), a proposed Tariff (Exhibit 6), and a survey map showing the location of Laurel Valley (Exhibit 7).

Foothills has submitted financial statements, *pro forma* operating costs and biographical information for Foothills management personnel in support of its *Petition*. Foothills states in its *Petition* that, "A need exists for the creation of the utility as existing residences have marginal sewer systems and the same is need[ed] to provide sewer services where area and soils will not permit subsurface sewer systems."⁴

² *Petition*, p. 1 (April 19, 2004)

³ *Petition*, p. 2 (April 19, 2004)

⁴ *Petition*, p. 1 (April 19, 2004)

Customer Agreement and Revised Proposed Tariff

Foothills filed a sample customer agreement and revised tariff for residential and commercial sewer rates together with the *Prepared Direct Testimony of Harold G. King, Jr* on October 5, 2004. The tariff filed on October 5, 2004 revises and replaces the original tariff that was attached to the *Petition* and referenced above as Exhibit 6 to the April 19, 2004 *Petition*.⁵

Pursuant to the revised tariff the monthly residential rate will be thirty-five dollars and eleven cents (\$35.11). Other residential fees include a five percent (5%) fee for non-payment, a disconnection fee of twenty-five dollars (\$25.00), a reconnection fee of fifteen dollars (\$15.00), a returned check fee of twenty dollars (\$20.00), and an annual access fee of eighty-four dollars (\$84.00).

Pursuant to the revised tariff the monthly commercial rate, *without food service*, will be based on the design flow expected from the type of establishment being served. A minimum of seventy-five dollars (\$75.00) per month will be charged for the first 300 gallons per day design flow expected (except off-site⁶ will have a seventy-three dollar (\$73.00) minimum plus pass through costs). For each additional 100 gallons per day of design flow expected, up to 1,000 gallons per day, an additional charge of fifteen dollars (\$15.00) per month per 100 gallons will be applied. For design flows expected over 1,000 gallons per day, up to 3,000 gallons per day, the following monthly charges per 1,000 gallons of daily flow will apply:

<u>Treatment</u>	<u>Drip/Spray Irrigation</u>	<u>Point Discharge</u>	<u>Off Site</u>
Sand-Gravel Filter	\$140.00	\$165.00	N/A
Lagoon	\$116.00	\$140.00	N/A
Off Site	N/A	N/A	Pass-Through Costs + \$73.00

⁵ *Prepared Direct Testimony of Harold G. King, Jr*, p. 2 (October 5, 2004).

⁶ Off site means the treatment and disposal by another entity

For design daily flows over 3,000 gallons, the monthly charge on all system configurations will be one hundred sixteen dollars (\$116.00) per 1,000 gallons of daily flow. Additional surcharges will apply when expected design flows are exceeded. For any month that a customer's water meter reading exceeds the expected design flow, the following surcharges will apply:

<u>Excess water usage</u>	<u>Surcharge</u>
1 gallon to 1,000 gallons above expected design flow	\$175.00
1,001 gallons to 2,000 gallons above expected design flow	\$200.00
Over 2,000 gallons above expected design flow	\$200.00/1000 gallons

If the water meter readings exceed the design flow for any three consecutive months, the monthly charge will be revised to reflect the increased usage. The customer will pay capital costs associated with increasing the capacity of the system.

Pursuant to the revised tariff the monthly commercial rate, *with food service*, will be based on the design flow expected from the type of establishment being served. A minimum of one hundred dollars (\$100.00) per month will be charged for the first 300 gallons per day design flow expected (except off-site will have a ninety-four dollar (\$94.00) minimum plus pass through costs). For each additional 100 gallons per day of design flow expected, up to 1,000 gallons per day, an additional charge of eighteen dollars (\$18.00) per month per 100 gallons will be applied. For design flows expected over 1,000 gallons per day, up to 3,000 gallons per day, the following monthly charges per 1,000 gallons of daily flow will apply:

<u>Treatment</u>	<u>Drip/Spray Irrigation</u>	<u>Point Discharge</u>	<u>Off Site</u>
Sand-Gravel Filter	\$170.00	\$192.00	N/A
Lagoon	\$142.00	\$163.00	N/A
Off Site	N/A	N/A	Pass-Through Costs + \$94.00

For design daily flows over 3,000 gallons, the monthly charge on all system configurations will be one hundred forty-two dollars (\$142.00) per 1,000 gallons of daily flow. Additional

surcharges will apply when expected design flows are exceeded. For any month that a customer's water meter reading exceeds the expected design flow, the following surcharges will apply:

<u>Excess water usage</u>	<u>Surcharge</u>
1 gallon to 1,000 gallons above expected design flow	\$210.00
1,001 gallons to 2,000 gallons above expected design flow	\$220.00
Over 2,000 gallons above expected design flow	\$220.00/1000 gallons

If the water meter readings exceed the design flow for any three consecutive months, the monthly charge will be revised to reflect the increased usage. The customer will pay capital costs associated with increasing the capacity of the system.

Other commercial fees include a five percent (5%) fee for non-payment, a disconnection fee of twenty-five dollars (\$10.00), a reconnection fee of fifteen dollars (\$15.00), and a returned check fee of twenty dollars (\$20.00).

Legal Standard for Granting Certificate of Public Convenience and Necessity

No public utility is permitted to begin construction or operation of a new utility facility or service before obtaining approval of the Tennessee Regulatory Authority. The procedure for obtaining a CCN evidencing such approval is set forth in Tenn. Code Ann. § 65-4-201(a), which states as follows:

No public utility shall establish or begin the construction of, or operate any line, plant, or system, or route in or into a municipality or other territory already receiving a like service from another public utility, or establish service therein, without first having obtained from the authority, after written application and hearing, a certificate that the present or future public convenience and necessity require or will require such construction, establishment, and operation, and no person or corporation not at the time a public utility shall commence the construction of any plant, line, system or route to be operated as a public utility, or the operation of which would constitute the same, or the owner or operator thereof, a public utility as defined by law, without having first obtained, in like manner, a similar certificate.

October 12, 2004 Hearing

Pursuant to a Notice of Hearing issued on September 30, 2004, a Hearing on the *Petition* was held on October 12, 2004. At the Hearing, the Hearing Officer heard testimony from Mr. Harold G. King, the Petitioner's president. Foothills was represented at the Hearing by Mr. J. Gilbert Parrish, Esq.

Mr. King testified that the Petitioner's proposed service will benefit the Laurel Valley area by providing needed wastewater treatment service.⁷ Mr. King stated that formation of a private utility is, according to his research, an acceptable solution to the Blount County Planning Commission for the operation of a wastewater plant in Blount County.⁸ Mr. King stated that Foothills has sufficient managerial and technical resources necessary to properly operate the system.⁹ During the Hearing the Hearing Officer requested Mr. King to file additional documentation demonstrating the qualifications of the person with primary responsibility for operating the system. On November 3, 2004, Mr. King filed six exhibits in response to the Hearing Officer's request. The November 3, 2004 filing demonstrated that the Foothills system will be operated by the Environmental Management Group, a company owned by Mr. Robert C. Young, Jr. The November 3, 2004 filing contained several attachments including a letter from the State of Tennessee Water and Wastewater Certification Board documenting Mr. Young's certifications as a wastewater collection and treatment system operator; a copy of the contract between the Environmental Management Group and Foothills; a copy of current contracts and references for the Environmental Management Group; and a copy of the Tennessee Department

⁷ Transcript of Proceedings, pp. 7, 12 (October 12, 2004).

⁸ Transcript of Proceedings, p. 8 (October 12, 2004)

⁹ Transcript of Proceedings, pp. 8-9 (October 12, 2004).

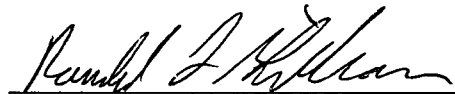
of Environment and Conservation operating permit for the Laurel Valley system.

Findings and Conclusions

Foothills has presented sufficient evidence to demonstrate that the present and future public convenience and necessity require the establishment of the system proposed in the *Petition*. Foothills has demonstrated a need for wastewater treatment service to Laurel Valley and that local providers of such service are either unwilling or unable to provide the service. Foothills has demonstrated that it has the requisite qualifications and resources to provide wastewater treatment service to Laurel Valley.

IT IS THEREFORE ORDERED THAT:

1. The *Petition* of Foothills Utilities Inc. to obtain a Certificate of Convenience and Necessity to provide sewer service in the service area identified in the exhibits to the *Petition* is approved.
2. The Tariff filed in this docket on October 5, 2004 is approved and the Petitioner's rates for wastewater service shall be as listed in the Tariff and as set forth in this Order.



Randal L. Gilliam
as Hearing Officer